



U.S. Department
of Transportation
**Federal Highway
Administration**

Memorandum

Subject: Highway Corridor Preservation
and Early Right-of-Way Acquisition

Date:

JUL 1 1988

From: Associate Administrator for
Right-of-Way and Environment
Washington, D.C. 20590

**Reply to
Attn. of:**

HEV-11/HRW-10

To: Regional Federal Highway Administrators

The nationwide problem of escalating land costs especially in areas of rapid growth and development has focused attention within the highway community on the need to pursue highway corridor preservation strategies more aggressively. This means ensuring that viable locations will exist for building future highways in the developing fringe of the Nation's metropolitan areas. Development activities in or adjacent to planned highway corridors will need and demand early and decisive actions by State and local governments and the FHWA. We believe corridor preservation concepts afford the best opportunity for State and local governments to overcome the problem of massive development occurring within potential right-of-way project limits. Future Federal-aid highway legislation for the Post 1991 period may revise many of the provisions which impact corridor preservation. Several AASHTO committees are currently working to establish a multidisciplinary task force to further refine the corridor preservation concepts included in the attachment. The results of this effort will be provided to States and FHWA for application on qualifying projects. In the meantime, we should encourage approaches available under current FHWA authority to preserve highway corridors and to provide for earlier right-of-way acquisition.

A new point of view is needed if locals, States, and FHWA are to successfully cope with corridor preservation. It is increasingly obvious that the optimum time for acquiring right-of-way (in terms of cost, displacements, avoidance of encroachment into environmentally protected lands, etc.) differs greatly from the optimum time for construction (in terms of its priority relative to other projects). The conventional project development process is not designed to resolve this difference.

The conventional practice typically has right-of-way acquisition immediately preceding construction. As a result, the timing of property acquisition is largely driven by the priority assigned to the project's construction schedule. This approach is not appropriate for all situations.

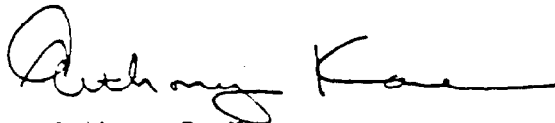
The attached paper focuses on approaches under existing regulatory requirements that the FHWA, State highway agencies (SHAs), and local governments can use to protect prospective highway corridors from competing with incompatible uses through early right-of-way acquisition. One approach is to conduct location and environmental studies earlier, so that a highway location is selected by the SHA and local sponsor and approved by the FHWA years before it would normally be done under the more conventional practice.

By identifying an approved location and authorizing acquisition of right-of-way before the major wave of land development has occurred, social, economic, and environmental impacts can be avoided or minimized. A strong link could be forged with local land use planning and control. Local officials could incorporate the approved highway location into local master plans or official maps, and approve land development activities with confidence that their approvals will be consistent with the proposed highway. They would also have a stronger basis for accepting contributions of land and/or offers of cost sharing from private sources.

Early location approval also provides for environmental advantages. A major opportunity exists for avoiding many impacts that would be inevitable if the location decision were made later. Impact avoidance results in projects that are in the best overall public interest and allows for less onerous environmental documentation and processing. Even if the project itself involves major construction on new location, a finding of no significant impact may be appropriate.

Another approach is to engage in protective buying on a site-specific basis when development threatens to foreclose highway location options. This method offers an opportunity for preserving the highway corridor through advanced acquisition and reducing project costs. As development occurs in the vicinity of a project, land values tend to soar. By advancing acquisition, right-of-way cost savings well over 50 percent can often be realized. While Federal-aid participation in protective buying is limited, State and local governments have considerable latitude in using protective buying on their own without jeopardizing Federal-aid participation in subsequent right-of-way and construction activities.

We urge you to encourage Division Administrators to provide this material to State and local officials. Meetings with State and local officials are encouraged to discuss opportunities for applying highway corridor preservation concepts on projects which may in the long run be advanced with Federal-aid highway funds. Identifying ways of involving local government from the perspective of project development and land use planning and control should be a key element in the discussions. We would appreciate your feedback on these discussions and on what States are doing on their own. We are particularly interested in any innovative approaches or any problems encountered, and any suggestions you may have to make it easier to preserve corridors for future highways.



Anthony R. Kane

Attachment

Federal Highway Administration
Office of Right-of-Way and Environment
June 30, 1988

Highway Corridor Preservation
and Early Right-of-Way Acquisition

Advance Corridor Approval

This involves FHWA granting location approval as soon as possible after planning studies show the definite need for a transportation project in a given corridor. The precise nature of the highway does not have to be fully developed in order to grant location approval. For example, the number of lanes and the degree of access control may not have been finalized. In some instances a final decision may not have been made as to whether a highway or a combined highway/mass transit facility would be advanced. Location approval must, however, be based on the completion of appropriate environmental documentation necessary to show compliance with the National Environmental Policy Act. This documentation must assist in making a decision on reasonable alternative alignments; however, it need not fully address all environmental issues provided a mechanism is established for revisiting environmental issues during the design phase. Issues that could be deferred might include detailed mitigation proposals, the environmental consequences of various design options, and the application for environmental permits.

Once the FHWA has granted location approval, right-of-way acquisition can commence, and/or local governments could use their land use controls to protect the selected highway corridor. Local land use plans and official highway maps could be used to guide compatible land development. Local governments could work cooperatively with land owners and developers to advance the highway by accepting land donations and dedications. In some instances developers may construct a portion of the highway or share in the cost of construction. For local land use controls to work well on Federal-aid projects, it is important that the FHWA location approval and the local master plan/official map adoption be coordinated. Unfortunately, many highly sophisticated local governments have very little appreciation of the steps required to develop Federal-aid highway projects. To achieve effective Federal/State/local coordination, FHWA will have to take a proactive role in assisting the SHAs in educating local governments on how their land use planning and control actions interrelate with the development of Federal-aid highway projects.

Reference: 23 CFR 771, 23 U.S.C. 323(c)

Accelerated Right-of-Way Acquisition

Once location approval is granted, SHAs or local governments can begin acquiring right-of-way based on a generalized highway design concept. If location approval is advanced by several years, then acquisition could typically begin 5 to 10 years before it might otherwise.

The critical element in accelerating acquisition is securing a source of funding. The SHAs have several options:

1. Apply for funds from the FHWA right-of-way revolving fund,
2. Use regular Federal-aid funds,
3. Set up an internal revolving fund using the advance construction mechanism authorized by 23 U.S.C. 115. The fund is replenished as projects are converted to regular Federal-aid projects and costs are reimbursed,
4. Finance acquisition themselves or jointly with local governments and private developer with no FHWA reimbursement, but with FHWA participation in construction so long as requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act (Uniform Act) were met, and
5. Accept donations of land for right-of-way, with a credit to the State's matching share from donations by nongovernmental entities under 23 U.S.C. 323 as recently amended.

When corridor preservation is the objective, the difference between the timing of right-of-way acquisition and physical construction may need to be considerably longer than the 10-year period provided in 23 U.S.C. 108(a). When this is the case, consideration should be given to extending this period as necessary, provided the project continues to be actively pursued by the State.

Reference: 23 CFR 630, Subpart C; 23 CFR 712.204(g); 23 CFR 712, Subpart G

Protective Buying

Protective buying is one method that States and local governments can use to preclude incompatible land development from occurring within a prospective highway corridor and prevent imminent development and increased land costs which tend to limit the choice of highway alternatives. The purpose of protective buying should be to preserve the status quo, i.e., keep land undeveloped, so that highway location options are kept open. It should not be undertaken to purposely sway the location decision toward one alternative. Protective buying is defined as purchasing a limited number of parcels within the limits of a proposed highway corridor, prior to location approval.

Federal-aid funds can be used in costs for protective buying provided (1) FHWA gives prior approval of the proposed protective buying, and (2) a public hearing has been held, or (3) a preferred alignment has been selected and announced by the State. The SHAs and local governments can finance protective buying without FHWA participation prior to these provisions and not jeopardize future FHWA participation as long as (1) the protective buying

is carried out in accordance with the Uniform Act and Title VI of the Civil Rights Act of 1964 and (2) the proposed protective buying would not bias the selection of a preferred alignment.

Reference: 23 CFR 712.204(d), 23 CFR 630.114(h)(3), 23 CFR 771.117(d)(12)